

If these amendments are deemed to touch the merits, admission is requested under 37 C.F.R. § 1.116(b). In this connection, these amendments were not earlier presented because they are in response to the matters pointed out for the first time in the Final Office Action. Lastly, admission is requested under 37 C.F.R. § 1.116(a) as presenting rejected claims in better form for consideration on appeal.

Claims 1-11, 13-16, 20-29, 33 and 34 are rejected under 35 U.S.C. § 102(b) as being anticipated by Lapeus et al., U. S. Patent No. 5,720,377 (the '377 patent) and Carey et al., U. S. Patent No. 5,599,501 (the '501 patent). Claims 17-19 and 30-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the '377 patent and the '501 patent in view of Mazza et al., U.S. Patent No. 5,350,564 (the '564 patent). Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the '377 patent and the '501 patent in view of Kurosaki et al., U.S. Patent No. 5,587,129 (the '129 patent). These rejections are respectfully traversed.

In the response to the previous Office Action, applicants stated that the instant claim 1 is patentable over the '377 and the '501 patents, either alone or in a combination, because the cited patents do not teach or suggest a carriage mechanism that grips a sample tube, transports the tube to a sample identification station, and then returns it to the storing station, as required by the instant claim 1. Similarly, applicants stated that the instant claim 20 is patentable over the '377 and the '501 patents because nothing in the '377 and the '501 patents teaches or suggests a carriage mechanism that grips the primary sample tube contained in a holder, whereby the primary sample tube separates from the holder, and transports the primary sample tube to the sample identification station.

In addressing the applicants' arguments, the Examiner noted that "the features upon which applicant relies (i.e., gripping means) are not recited in the rejected claims." Although applicants believe that the term "carriage mechanism" should be read in view of the specification to include both a gripper and an overhead carriage assembly, applicants amended claims 1 and 20 to expedite the prosecution of the instant application. Amended claims 1 and 20 recite "a carriage mechanism, comprising a gripper," as suggested by the Examiner. Therefore, the clinical

chemistry systems of claims 1 and 20 are structurally different from the cited the '377 and the '501 patents that do not contain a gripper.

The Examiner also contended that the carriage mechanism of the '377 patent, "comprising outwardly extending paddles or profiles 88a-b, where the sample holder 33 is positioned between them, does function to 'grip' the sample holder when the belt rotates and the rack is in contact with these paddles and pushed onto the sampling station." In response, applicants amended claims 1 and 20 to clarify that in addition to gripping individual tubes, the gripper of the present invention lifts the tubes to transport them to and from sampling station (claim 1) or to sample identification station (claim 20). A support for these amendments may be found on page 11, lines 1-10, of the specification. Even assuming that paddles or profiles 88a-b are capable of "gripping" tubes contained in the racks (but not individual tubes as required in the present invention), the paddles are not capable of and not intended for lifting either racks or tubes for transporting. Instead, the profiles 88a-b push the racks containing tubes, one at the time, from the load position to process queue (column 7, lines 55-63; column 8, lines 7-21).

Finally, the Examiner continues to argue that the '377 patent anticipates the instant claim 20, because it teaches "a carriage mechanism 51 that grips and transports the primary tubes having a bar code to the sample identification station 83, whereby the sample tube is separated from its holder 38/38a." Applicants disagree.

The Examiner appears to believe that the tray 38 functions as a "holder" of tubes, because "the sample racks and tubes 34 are disclosed as being loaded onto and removed from the tray 38 without interruption of the transport system 14." However, even if the tray 38 of the '377 patent indeed functions as a holder, it holds the racks, not the tubes. Accordingly, it is not individual sample tubes, but rather the sample racks 33, that separate from the tray 38 in the '377 patent during the operation of the transport system (column 6, lines 33-35):

The drive system moves the sample racks 33 along the top surface of the input tray via a magnetic force generated on the underside of the tray 38.

Thus, by disclosing the tray 38, the '377 patent does not anticipate claim 20 of the present invention that requires "a carriage mechanism, comprising a gripper that grips and lifts the primary sample tube contained in a holder, whereby the primary sample tube separates from the holder." Additionally, as discussed above, the '377 patent has no teaching whatsoever of a gripper that grips and lifts the primary sample tube.

Therefore, nothing in the '377 and the '501 patents teaches or suggests a carriage mechanism with a gripper that grips and lifts a sample tube, transports the tube to a sample identification station, and then returns it to the storing station, as required by the instant claim 1. Similarly, nothing in the '377 and the '501 patents teaches or suggests a carriage mechanism with a gripper that grips and lifts the primary sample tube contained in a holder, whereby the primary sample tube separates from the holder, and transports the primary sample tube to the sample identification station. Therefore, a combination of the '377 and the '501 patents does not teach or suggest the instant claims 1 or 20. Claims 2-11, 13-16, 21-29 and 33-34 depend, directly or indirectly, from the patentable claims 1 and 20 and are, therefore, believed to be patentable for at least the same reasons as claims 1 and 20.

Claims 17-19 and 30-32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the '377 and the '501 patents in view of Mazza *et al.*, U.S. Patent No. 5,350,564 (the '564 patent). This rejection is respectfully traversed.

The '564 patent cannot remedy the defect of the '377 and the '501 patents, and is not relied upon by the Examiner for such. The '564 patent is used by the Examiner for teaching a tube spinner. The '564 patent has no teaching whatsoever of moving an individual primary sample tube, much less of the carriage mechanism with a gripper that grips, lifts and transports a primary sample tube as required by the instant claims 1 and 20. Instead, the '564 patent describes an automatic chemical analyzer that utilizes interlocking carrier members for storing and transporting sample tubes in one direction, from an on-loading area to an off-loading area. Therefore, claims 1 and 20, as well as claims 17-19 and 30-32 that

depend from claims 1 and 20, are patentable over the '377, '501, and '564 patents, either alone or in any combination.

Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the '377 and the '501 patents in view of Kurosaki *et al.*, U.S. Patent No. 5,587,129 (the '129 patent). This rejection is respectfully traversed.

The '129 patent, cited against claim 12, does not address the deficiencies of the '377 and the '501 patent references. The '129 patent is relied upon for teaching a cap piercer, and it does not teach a carriage mechanism with a gripper that grips and lifts one of the plurality of primary sample tubes, as required by claim 1. Therefore, claim 1, as well as claim 12 that depends therefrom, is patentable over the '377, the '501, and the '129 patents, either alone or in any combination.

Applicant believes the foregoing amendments place the application in condition for allowance and early, favorable action is respectfully solicited.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles telephone number (213) 337-6700 to discuss the steps necessary for placing the application in condition for allowance.

If there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1314.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

Date: October 30, 2002

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Version with markings to show changes made:

IN THE CLAIMS:

Please replace the text of claims 1 and 20 with the following text:

1. (Three Times Amended) A clinical chemistry system comprising:
a storing station that receives and stores a plurality of primary sample tubes;
a sampling station including a sample probe that draws a volume of sample from a primary sample tube and transfers the volume to a secondary tube;
a carriage mechanism, comprising a gripper that grips one of the plurality of primary sample tubes, lifts it, and transports the primary sample tube to the sampling station and returns the primary sample tube from the sampling station to the storing station;
a first and a second secondary tube transfer station, respectively, for coupling to first and second analyzers, the first and second sample tube transfer stations adapted to move the secondary sample tube from a continuous transport mechanism to be received by a corresponding one of the first and second analyzers;
and
the continuous transport mechanism for moving filled secondary tubes to a selected one of the first and second secondary tube transfer stations.

20. (Three Times Amended) A clinical chemistry system comprising:
a sample identification station comprising a sample identification mechanism for determining sample identification information from a primary sample tube;
a transferring mechanism for transferring a volume of the sample from the primary sample tube into a secondary sample tube;
a carriage mechanism, comprising a gripper that grips and lifts the primary sample tube contained in a holder, whereby the primary sample tube separates from the holder, and transports the primary sample tube to the sample identification station;

a continuous transport mechanism for moving secondary sample tubes within the system;

first and second sample tube transfer stations, respectively, for coupling to first and second analyzers, the first and second sample tube transfer stations adapted to move the secondary sample tube from the continuous transport mechanism to an interface of a first or second analyzer; and

a host computer, the host computer receiving sample identification information and issuing a sample testing message that includes one of the first and second analyzers as a destination.